United Industrial Workers, Service, Transportation, Professional and Government of North America, Local 28, AFL–CIO *and* Seven-Up/Royal Crown Bottling Company of Southern California and Salesdrivers, Helpers & Dairy Employees Union, Local No. 683 of the International Brotherhood of Teamsters, AFL–CIO. Case 21–CD–603

July 20, 1992

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

The charge in this Section 10(k) proceeding was filed December 31, 1991, by the Employer, Seven-Up/Royal Crown Bottling Company of Southern California, alleging that the Respondent, United Industrial Workers, Service, Transportation, Professional and Government of North America Local No. 28 (UIWS), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Salesdrivers, Helpers & Dairy Employees Union, Local No. 683 of the International Brotherhood of Teamsters, AFL–CIO (Teamsters). The hearing was held February 28, 1992, before Hearing Officer Glenn R. Caddick.

The National Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, a Delaware corporation, manufactures and distributes beverage products at its facility in Vernon, California, where it annually ships goods valued in excess of $50,000 to customers located outside the State of California. The parties stipulate, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the UIWS and the Teamsters are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer has central bottling and warehouse facilities in Vernon and Buena Park, California. The Employer has a collective-bargaining agreement with the UIWS covering employees in its transfer hauling department at its Vernon production facility. Generally, these transfer hauling department employees deliver products from the central warehouse in Vernon to the Employer's 10 branch facilities in southern California, including its San Diego warehouse. The transfer hauling department also makes deliveries directly to customers. The truck fleet located at the Vernon facility consists of 96 trailers, which are each 45 feet long, and 37 tractors with manual 13-speed transmissions capable of hauling full 45-foot trailer loads. The 45-foot trailers hold up to 2000 cases[1] of product.

At the San Diego warehouse facility, the Employer has a collective-bargaining agreement with the Teamsters covering employees, including drivers, who deliver product from this facility to customers. Customers also make separate arrangements to pick up product from this branch facility. The drivers who work out of the San Diego facility use two types of vehicles to make deliveries: a side loading truck (either on a straight truck chassis or a tractor-trailer type), or a rear-loading 30-foot trailer hauled by a tractor with an automatic transmission. The 30-foot trailers hold 1100 cases of product.[2]

The Employer has delivered product to Price Clubs since 1986. Orders made on a week-to-week basis for less than 2000 cases are filled out of the branch facilities using, in the case of the San Diego warehouse, Teamsters- represented drivers. The Employer since 1987 has also delivered to the San Diego Price Clubs 2000-caseload orders directly out of the Vernon facility, using UIWS-represented transfer hauling employees. It appears that up until 1991, all such 2000-caseload deliveries were made directly from the Vernon warehouse to the San Diego Price Club stores. However, in 1991, transfer hauling department employees began also to make ''indirect deliveries'' to Price Clubs whereby they would deliver some product to a branch facility warehouse and immediately pick up 2000-case truckloads of the needed product for the Price Clubs. These ''indirect deliveries'' would occur three or four times a year during 2-week periods when the Price Club engages in a ''buy-in'' of 150,000 to 300,000 cases ordered in 2000-case increments.[3]

Buy-ins occurred in March, June, and December 1991. In March, transfer hauling trucks were used to deliver five 2000-case truckloads from the San Diego warehouse facility to complete a 12-truckload order for the San Diego facility to complete an 11-truckload order. The remaining product was shipped directly from the Vernon facility. UIWS-represented transfer

[1] The cases of product referred to consist of 1 dozen 12-ounce cans.

[2] The San Diego facility also has one 38–40 1-foot trailer which can hold 1600 caseloads. Such a load, however, is beyond the 1300 caseload hauling capacity of the tractors located at this facility.

[3] It appears that during these ''buy-ins,'' the Employer delivers most of the product directly from the Vernon facility, but due to the depletion of stock from this location, it must also supply part of the order from the branch facilities using ''indirect deliveries.''

hauling employees were used to deliver all the 2000-case truckload deliveries.

This dispute arose on July 29, 1991, when the Teamsters filed a grievance alleging that the Employer had violated their collective-bargaining agreement ''by delivering products to the Price Club directly from Vernon . . . to the detriment of employees' job opportunities.'' On December 20, 1991, the UIWS, by letter, threatened to ''take all necessary legal action to protest such work assignment including picketing, handbilling, a boycott and/or a work stoppage if the work of delivering to the superstores is reassigned to the Teamsters.'' In response, the Employer filed the instant unfair labor practice charge, alleging that the UIWS had violated Section 8(b)(4)(D) by threatening it with economic action if assignment of its deliveries from Vernon to the San Diego area Price Clubs was changed.

On January 23, 1992, the Teamsters clarified its grievance by alleging that the Employer had violated their collective-bargaining agreement by delivering product from Vernon to the San Diego warehouse and then using nonbargaining unit employees to deliver product to the Price Clubs from the San Diego warehouse. The UIWS, however, continues to claim for its members all work assigned to the Employer's transfer hauling department and reaffirmed its threat of economic action at the hearing.

B. *Work in Dispute*

The disputed work involves delivery of 2000-case truckloads of product from the Employer's San Diego branch facility warehouse to Price Clubs during Price Club buy-ins, when there is insufficient inventory to deliver the entire order directly from the Vernon facility.[4]

C. *Contentions of the Parties*

The Teamsters contends that no jurisdictional dispute exists because it has disclaimed the work originally in dispute, delivery of a transfer-truck-size quantity of product from Vernon directly to San Diego Price Clubs, and because the UIWS has not threatened picketing or other unlawful action if the Teamsters is engaged in distributing product directly from the San Diego warehouse to the Price Clubs. The Teamsters further contends, assuming arguendo that the Board asserts jurisdiction, that the scope of the Board's decision should be narrowed to indirect deliveries to Price Clubs by way of the San Diego warehouse during buy-ins. Finally, the Teamsters contends that the terms of its collective-bargaining agreement, past practice, and area practice support award of the disputed work to the employees it represents.

The UIWS contends that employees it represents should perform all work that the Employer assigns to its transfer hauling department. At the hearing, the UIWS reaffirmed the applicability of its threat if Teamsters employees are assigned the disputed work under the amended grievance. The UIWS further contends that award of the disputed work to the employees it represents is supported by collective-bargaining history, the Employer's past practice and preference, area practice and relative skills, safety, and economy and efficiency of operations.

The Employer has assigned the disputed work to employees represented by the UIWS. It contends the assignment is supported by its preference, economy and efficiency, past practice, industry practice in the area, relative skills, safety factors, and its collective-bargaining agreement with each Union. The terminated or discharged as a result of its assignment of the work in question to the UIWS.

D. *Applicability of the Statute*

At the time the charge in the instant case was filed on December 31, 1991, the dispute stemmed from a grievance initiated by the Teamsters on July 29, 1991, alleging that the Employer had violated the terms and conditions of its collective-bargaining agreement with the Teamsters by making deliveries directly to San Diego area Price Clubs from its Vernon facility. In response to that grievance, the UIWS, in a letter to the Employer of December 20, 1991, threatened picketing, handbilling, a boycott, or a work stoppage if the work of delivering to stores like Price Clubs from its UIWS-represented facility were to be reassigned to the Teamsters. Subsequently, on January 23, 1992, the Teamsters amended its grievance to apply to deliveries made by nonbargaining unit employees from the San Diego facility to the Price Clubs. At the hearing, the Teamsters disclaimed interest in direct deliveries by UIWS-represented employees driving transfer hauling vehicles from the Vernon facility to the Price Clubs, but reaffirmed its position that any work that the Employer assigned to its transfer hauling department that involved delivery from its San Diego warehouse was to be done by the employees it represents.

The parties stipulated that they are not bound by any common jurisdictional dispute settlement procedure. They also stipulated that there is no agreed-on method for resolution of this dispute. Accordingly, we find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred[5] and that there exists no

[4] The description of the work in dispute has been modified from that set forth in the notice of hearing to exclude any reference to delivery of product directly from the Employer's Vernon facility. The Teamsters has made an effective disclaimer of interest in that work.

[5] We find unpersuasive the Teamsters' claim that the UIWS' threat of economic action is an insufficient basis for this proceeding be-

agreed-on method for voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act, and that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of the dispute.

1. Certifications and collective-bargaining agreements

The Employer has a collective-bargaining agreement with each Union. Under article VIII, section 5(a), of its agreement with the Teamsters, all distribution originating from the San Diego warehouse is to be performed by the employees that Union represents, namely, drivers (referred to as branch or delivery drivers) and other plant and warehouse employees at the Employer's San Diego facility. The Employer asserts, however, that that section, although part of the agreement in effect when the dispute originated, applies to an employee category, driver-salesperson, that no longer exists. The Teamsters contests that assertion and claims that only certain sections of article VIII, not including section 5(a), are no longer applicable. The Teamsters notes that article VIII, although entitled ''Conditions - Sales Department,'' nevertheless at section 6(h) refers specifically to delivery drivers.

The Employer's collective-bargaining agreement with the UIWS covers drivers in the transfer hauling department of the Employer's Vernon facility who drive tractor-trailers. The Employer has assigned the work in dispute to employees in this category.

On the basis of the evidence presented, this factor does not favor assignment of the disputed work to employees represented by either the Teamsters or the UIWS.

2. Company preference and past practice

The Employer prefers to assign the delivery of transfer hauling loads of product, 2000 12-pack cases or 20 grocery pallets, to employees represented by the UIWS. Those employees have been making 2000-case truckload direct deliveries to San Diego area Price Clubs since 1987 and to Price Clubs outside of the San Diego area since 1986. This factor favors employees in the transfer hauling department represented by the UIWS.

3. Area and industry practice

Two of the Employer's competitors, Coca-Cola and Pepsi-Cola, have production facilities in San Diego. Employees represented by the Teamsters deliver product directly from those plants to the Price Clubs. Coca-Cola, however, also uses employees represented by the UIWS to deliver product from its production facility in the Los Angeles area to San Diego Price Clubs. Consequently, the evidence pertaining to this factor is inconclusive.

4. Relative skills

Employees in the transfer hauling department are trained to drive 45-foot transfer hauling vehicles with 13-speed manual transmissions. They have class commercial, nonrestricted licenses. Approximately 50 percent of the San Diego-based drivers have the same license. That percentage, however, is expected to decrease over time under revised driver licensing provisions in California, whereby more restrictions are required on a license. For example, limited to operation of vehicles with an automatic transmission. Most of the tractors used in the San Diego facility are automatic, while those used by the transfer hauling department have the manual transmissions referred to above. Branch drivers, who generally drive 30-foot vehicles, would thus have to receive additional training in order to operate the larger transfer hauling vehicles. This factor favors assignment of the disputed work to transfer hauling department employees at the Vernon facility represented by the UIWS.

5. Economy and efficiency of operations

The Employer asserts that the cost of delivery per case by the transfer hauling department is 7 cents, while the delivery cost per case by the San Diego facility employees represented by the Teamsters is 26 cents. The Teamsters notes that these comparisons are not pertinent to the work in question because they result primarily from the difference in volume between deliveries by the transfer hauling department and by the San Diego warehouse employees. The Employer reports, however, that the Price Clubs prefer single-truck deliveries of 2000-case increments because it speeds delivery and makes processing the invoices and scheduling and checking the deliveries easier. Although the Teamsters contends that the distance the transfer hauling department vehicles travel from Vernon to San Diego before delivering product from the San Diego facility offsets any savings obtained by using fewer vehicles, the Employer notes that because transfer hauling department vehicles regularly resupply the San Diego warehouse, they are already in the area.

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cause the UIWS characterized such threatened activity as ''necessary legal action.''

These facts indicate that it is more efficient to assign the work in question to the Employer's transfer hauling department employees represented by the UIWS.

6. Safety

The Employer reported that the accident rate for its transfer hauling department drivers was lower than for its San Diego-based drivers (one per 460,000 miles compared with one per 18,000 miles). The Teamsters suggests that these statistics compare long haul with local deliveries and thus have no significance. The data pertaining to this factor are inconclusive.

Conclusions

After considering all the relevant factors, we conclude that employees represented by the UIWS are entitled to perform the work in the dispute. We reach this conclusion relying on the factors of employer preference and past practice, relative skills, and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by the UIWS, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of Seven-Up/Royal Crown Bottling Company of Southern California represented by United Industrial Workers, Service, Transportation, Professional and Government of North America, Local 28, AFL–CIO are entitled to perform delivery of transfer hauling department truckloads of 2000 or more 12-bottle cases of product from the Employer's San Diego distribution center to San Diego area Price Clubs during Price Club buy-ins when there is insufficient inventory to deliver the Price Club's entire order directly from the Employer's Vernon facility.